

## REMARKS

### Status Summary

The Office Action and the Advisory Action dated February 16, 2011 (the "*Advisory Action*"), has been noted and its contents carefully studied. Pending claims 1, 3-16, 18, 20, and 22-24 stand rejected in this Application. By this Amendment, claims 1, 3, 5, 7-13, 15-16, 18, 20, and 22-24 are amended with support for the amendments found in paragraphs [0014], [0015], [0027], and [0028]. No new matter has been added. Reconsideration of the application as amended and based on the remarks set forth below is respectfully requested.

### Specification

The Office Action on page 5 alleges that the as-filed specification does not provide proper antecedent basis for the recitation in claims 10-12 of a "computer readable storage medium" in accordance with 37 C.F.R. 1.75(d)(1). Applicant respectfully traverses this objection.

37 C.F.R. 1.75(d)(1) provides that "terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." Under this standard, and in light of the fact that applicant may be his own lexicographer, the exact phrase "computer readable storage medium" does not have to be present in the specification in order to provide proper support and antecedent basis in the description for this phrase. In the as-filed specification, paragraph 27, the specification recites "The preferred apparatus 10 includes a main computer 12 which includes databases for storage of information," that the main computer may be accessed by a user through "connection with the main computer 12 through communication means, such as any known internet connection means." The description continues in paragraph 28 with the recitation "When the main computer 12 is accessed by a user...the user will be able to access the system of the present invention through a website which will include a main menu." The Internet, and by extension a website, is a stateless medium. This requires frequent storage of interactions with the website on a computer readable storage medium such as a physical storage array, personal computer storage device, or even main computer memory, in order to utilize the system for

which a website is the visual user interface. The specification clearly recites both the use of website for interaction with the menu system, and recites the existence and use of databases on the main computer for use with the data to populate the website with information for the interaction with a user. Thus, there is recitation of a computer readable storage medium, the disk or main memory storage within the main computer, and the storage of data directly used by the system within the main computer. Therefore, it is clear that although the specification does not recite the exact phrasing “computer readable storage medium” there is sufficient support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

In an effort to expedite examination claims 10-12 have been amended to remove the phrase “computer readable storage medium”; however, applicant maintains that the phrase “computer readable storage medium” is supported by the recitation in the specification and reserves the right to use such phrasing if necessary.

#### Claim Rejections, 35 USC §112

Claims 1, 3-9, 13-16, 18, 20, and 22-24 stand rejected under 35 USC §112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter that the applicant regards as the invention. These rejections are respectfully traversed.

The Office Action on page 5 alleges that the claim recitation of a “subsystem comprising a section for...” is indefinite and invokes a “means for” interpretation as articulated in 35 USC §112, paragraph 6. Applicant has amended the claims to better recite the action of the subsystems and sections in the claims and to traverse any “means for” interpretation of the claims as amended.

The independent claims 1, 10, and 13 have each been amended to recite “a main computer device having a product and shelf space availability system instantiated thereon” and “a user station in communication with the main computer device and having a web-based main menu interface for the product and shelf space availability system and providing a plurality of user accessible subsystems” thus reciting a main system functionality that is instantiated and operable upon a main computer system. These amendments are fully supported in paragraphs 14

and 15 of the as-filed specification. The menu-driven sub-sections of the system and method are available via a web-based menu system that serves as a user interface for users of the system. Users connect to the main computer device through the menu interface in a standard Internet connection on satellite computers that are in network communication with the main computer and may use the system in operation on the main computer. By this amendment, Applicants have recited the connection between the networked software elements recited and the main computer device upon which the process is operational.

The claims have also been amended to recite features as disclosed in paragraphs 28-30 of the as-filed specification. In paragraph 28, the specification recites a main menu that provides a plurality of options for the user. The main menu is subdivided into “different subsections or chapters of the system”, each subsection of which references a “section” of the menuing system. In paragraph 30, the specification recites the use of one or more of the sections for using the system including “a user will also be able to view products registered within the system through section 7,” which is just one of the enumerated sections that are each subsections of the main menu accessible to the user. Thus, paragraphs 28-30 and 38 provide a clear recitation of one or more actions that a user performs to access and use the sections of the website to accomplish the purpose of the registration of products and the further use of the sections of the system for a supplier to ensure there is space available for purchase or rental within the vendor premise.

In addition, Applicant would like to point out that claim 10, from which claims 11 and 12 depend, recites “accessing a main computer device having a product and shelf space availability system instantiated thereon” and “using an internet connection to input information to a database associated with the product and shelf space availability system on the main computer device and the access further comprising the following operational steps.” These steps clearly instantiate the method claimed being associated with a particular machine thus meeting at least the first step of the test enumerated in *Bilsky*, 561 U.S. \_\_\_\_ (2010), for a process to be patentable under 35 USC §101.

Therefore, Applicants assert that the claims as amended enumerate a patentable process as per 35 USC §101 and particularly point out and distinctly claim the performance of the system in accordance with 35 USC §112. Reconsideration is respectfully requested.

Claim Rejections 35 USC §103

Claims 1, 3-16, 18, 20, and 22-24 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 7,340,419 to Walker et al. (hereinafter "Walker") in view of U.S. Patent No. 5,029,098 to Levasseur (hereinafter "Levasseur") and further in view of Paper No 20090123 to "Fields and Fulmer" (hereinafter "Fields"). These rejections are respectfully traversed.

Independent claims 1 and 13, as amended, generally recite a "section operable to allow suppliers to ensure there is available shelf space for purchase or rent in a vendor premise," and claim 10, as amended, generally recites "negotiating with said vendors for selected, desired available shelf space for purchase or rent in a vendor premise."

With regard to claims 1 and 13, the Office Action on page 11 admits that Walker does not disclose or teach at least "ensuring that there is available shelf space in a vendor premise." Applicant agrees with this admission. The Office Action on page 11 asserts that Levasseur remedies the lack of disclosure in Walker. Applicant respectfully disagrees.

Levasseur discloses a vending machine with an integral microprocessor that collects data on the full or empty status of a plurality of bins within the vending machine. The data is reported to a serviceman via an alphanumeric display, also controlled by the microprocessor as an output mechanism, that reports the number of items remaining within a bin and whether a particular bin is empty or not. The serviceman may then decide how to allocate the bins for product when refilling in order to place products with higher sell through in the vending machine by allocating more bin space or less bin space to products based upon the collected data. This is not the same as the recitation in claims 1 and 13, as amended, and does not remedy the lack of disclosure in Walker.

Levasseur does not provide any disclosure for any use of the microprocessor in the vending machine for the reallocation of empty shelf space; that function is performed by the serviceman. Levasseur is completely silent with regard to the ability of the system to allow suppliers to ensure the availability of open shelf or bin space for purchase or rent in a vendor's premises. Thus, Levasseur does not remedy the lack of disclosure in Walker for a "section

operable to allow suppliers to ensure there is available shelf space for purchase or rent in a vendor premise” as recited in claims 1 and 13.

Claim 10 recites at least “negotiating with said vendors for selected, desired available shelf space for purchase or rent in a vendor premise.” The Office Action admits on page 11 that Walker does not disclose or teach at least “ensuring that there is available shelf space in a vendor premise.” Additionally, Walker is completely silent with regard to ensuring that there is available shelf space for purchase or rent and negotiating for such available space. Walker must look to Levasseur to remedy the lack of disclosure; however, Levasseur does not do so.

Once again, Levasseur is completely silent with regard to the ability of the system, in this case a vending machine, to ensure the availability of open shelf or bin space or to offer such open shelf or bin space for purchase or rent to another vendor. Equally, Levasseur is silent with regard to the negotiation with vendors to purchase or rent any available shelf space that would possibly be found in the vendor premise presented in the reference. Thus, Levasseur does not remedy the lack of disclosure in Walker.

The Office Action also asserts Fields as disclosing accepting products for display and negotiations between vendors and suppliers for display space. However, Fields is completely silent with regard to “ensuring the availability of shelf space for purchase or rent in a vendor premise.” Fields discusses the use of slotting fees or the use of cases of free products provided from a vendor to keep products already stocked on shelves in those positions. There is never any time that the owner and provider of the shelf space has available shelf space for negotiation and reservation by new vendors, and the shelf space is never available for purchase as it remains firmly in the control of the premises owner at all times. Therefore, Fields does not provide a disclosure for “ensuring the availability of shelf space for purchase or rent in a vendor premise” or negotiating for such ensured available shelf space as recited in claims 1, 10 and 13, as amended. Thus, Fields does not remedy the lack of disclosure in Walker and Levasseur.

Additionally, the as-filed specification in paragraph 38 provides full disclosure for the recitation of the offer of open shelf space for sale or rent. Paragraph 38 recites “before shipping the product to the vender, the supplier will have to ensure that there is space available within a vendor premise,” that “each vendor will be entitled to set its own SUS and the maximum number

of units available,” and that “suppliers will then be allowed to purchase or rent a predetermined maximum number of units (note: referring to shelf space) per product.” Thus, the as-filed specification directly recites an interaction between a supplier of products and a vendor premise supplier of shelf unit space (SUS) for the purchase or rental of available shelf space units only after ensuring that such shelf space is available from the vendor indicated.

Available shelf space is very different from other products and services for sale in the context of the prior art. In much of the asserted prior art the sale of product is offered from a vendor to those who access the system to purchase a product displayed for sale. The offer of shelf unit space occurs between a supplier and a vendor, not between a customer perusing shelves for products to purchase. First there must be an opportunity for the customer to view the products for sale, which only occurs after shelf space has been secured and product placed upon the shelf space for customer selection. The shelf space is an important part of the transaction, but is not a product that may be purchased for shipment to a customer even if a customer were interested in shelf space. Walker discloses the purchase and shipment of products from shelf space displays to a customer, but does not disclose the clearinghouse function of ensuring the availability of shelf space before purchasing or renting such shelf space for the display of products that are then available for purchase by customers. Thus, this offer, negotiation for, and purchase or rent of shelf space is very different from that of products offered for sale in the asserted Walker reference. The claims, when considered in their entirety, recite ensuring the availability of shelf space in a vendor premise prior to the purchase or rental of the available shelf space. These recited features are neither disclosed nor taught in the asserted Walker, Levasseur, and Fields and Fulmer references.

Therefore, Walker, Levasseur, and Fields, either singly or in combination, do not provide the disclosure necessary to render obvious a “section operable to allow suppliers to ensure there is available shelf space for purchase or rent in a vendor premise,” as recited in claims 1 and 13, as amended, or “negotiating with said vendors for selected, desired available shelf space for purchase or rent in a vendor premise” as recited in claim 10, as amended. Reconsideration and allowance of these claims is respectfully requested.

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Claims 3-9, 11-12, 14-16, 18, 20, and 22-24 are likewise allowable by virtue of their dependency on one of claims 1, 10, or 13. Moreover, each of these claims includes additional features that further distinguish the cited art. For example, claim 9 recites at least a messaging system to permit vendors and suppliers to send messages to one another.

Applicant therefore submits that all pending claims are patentable over the prior art of record, and reconsideration and allowance of all pending claims are accordingly requested.

#### CONCLUSION

Should there be any minor issues outstanding in this matter, the Examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

#### DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment associated with this filing to Deposit Account Number 50-3976. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully Submitted,

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